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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941

GEORGE E. MORTON, TRUSTEE, AND CITY NATIONAL BANK, A BANKING CORPORATION, AS TRUSTEE, AND INDIVIDUALLY ..... *Petitioners,*

v. No. 354

DARDANELLE SPECIAL SCHOOL DISTRICT NO. 15 OF YELL COUNTY, ARKANSAS ..... *Respondent.*

REPLY BRIEF FOR PETITIONERS

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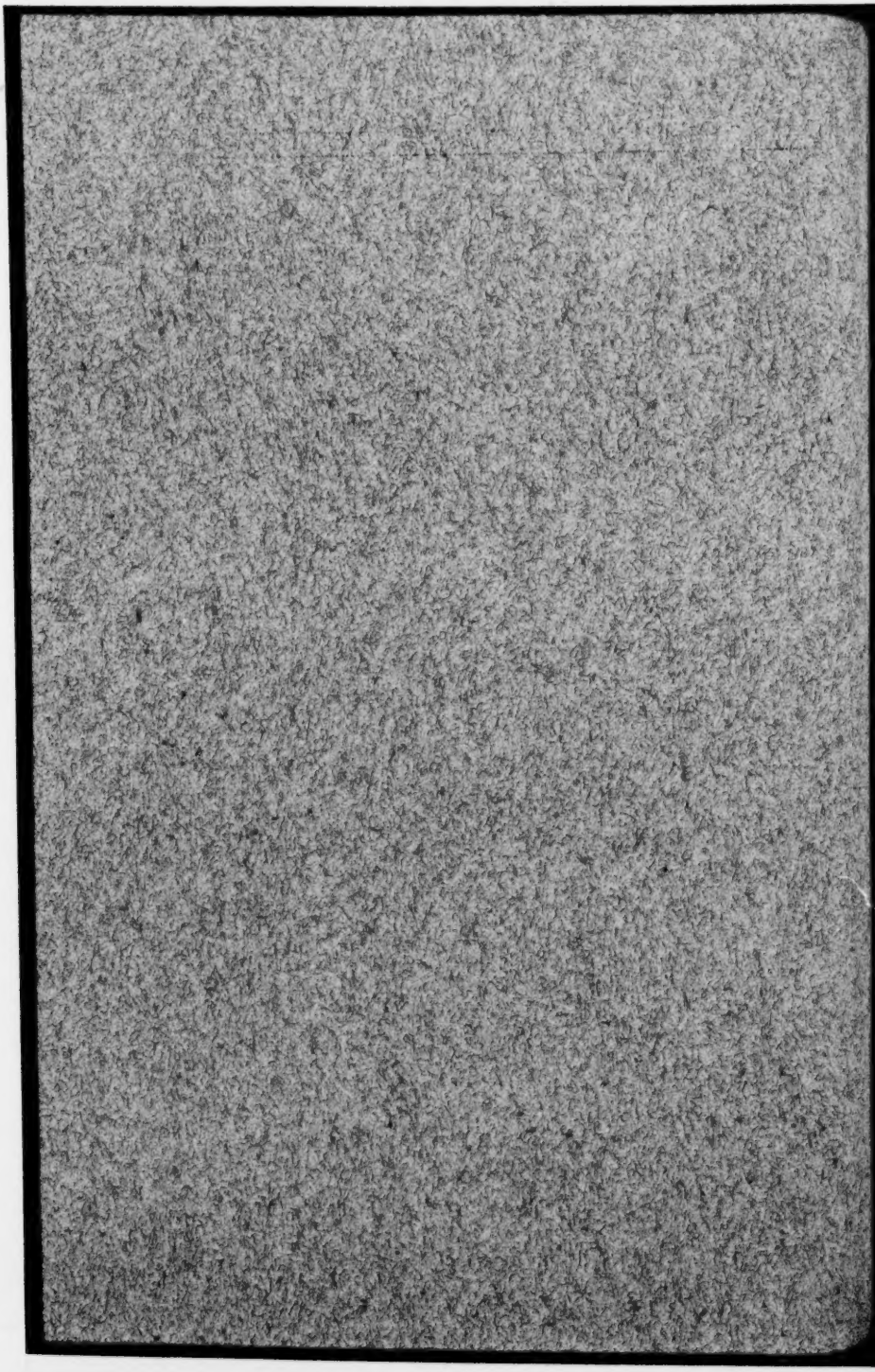

INDEX

Page

ARGUMENT

(a) Respondent fails to grasp constitutional question involved 1

(b) Respondent claims if eighteen mills are used to pay buildings it cannot operate schools 4

(c) Erie Railroad and Tidal Oil Cases 5

(d) Conclusion 8

TABLE OF AUTHORITIES

Cases

A. H. Andrews Co. v. Delight Spec. School Dist., 95 Ark. 26, 128 S. W. 361 3

Erie Railroad Co. v. Tompkins, 304 U. S. 64 5

Pertuis v. Williams, 137 Ark. 425, 208 S. W. 789 3

Dissenting Opinion: Pledger v. Cutrell, 189 Ark. 562, 75 S. W. (2d) 76 7

School Dist. of Hartford v. West Hartford School Dist., 102 Ark. 261, 143 S. W. 895 4

Tidal Oil Co. v. Flannagan, 263 U. S. 444 5

W. B. Worthen Co. v. Thomas, 292 U. S. 426, 54 S. Ct. 816, 78 L. E. 1344 6

CONSTITUTION AND STATUTES

Act 248 of the Acts of Arkansas for 1905, as amended by Act 160 of 1917 (Secs. 8977, 8978 and 9010, Crawford & Moses' Digest of the Statutes of Arkansas, 1921) 6

Act 169 of the Acts of Arkansas for 1931 ..... 4, 7

Act 28 of Acts of Arkansas, Spec. Sess. for 1933 (Acts of Arkansas, 1933, p. 88) 2

Constitution of the United States, Art. 10, Sec. 1 1

Constitution of Arkansas, 1874, Art. 14 (Pope's Dig., p. 185) 3, 6

Amendment No. 11 to Constitution of Arkansas (Pope's Dig., p. 185) 7

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REPLY BRIEF OF PETITIONERS

ARGUMENT

A.

Respondent Fails to Grasp the Constitutional Question Herein Involved

Section 10 of Article 1 of the Constitution of the United States provides: "No State shall * * * pass any * * * law impairing the obligation of contracts."

The object of this provision was to prevent just the thing that is now sought to be done in this case. Section 14 of the Constitution of the State of Arkansas by specific words recites: "Intelligence and virtue being the safeguard of liberty and the bulwark of a good government, the State shall ever maintain a general, suitable and efficient system of free schools whereby all persons in the State

between the ages of 6 and 21 years shall receive gratuitous instruction." (Art. 14, Sec. 1, Constitution of Arkansas, Pope's Digest, page 146.)

Section 3 then charges the General Assembly with the responsibility to pass the necessary laws to provide for the support of common schools by taxes, etc. The Legislature from time to time passed various acts heretofore cited in an attempt to carry out this mandate contained in the Constitution, the act in question being Act 248 of 1905 heretofore cited. There did not have to be any specific language in that act authorizing the pledging of anything except the real estate, it being well known by everyone that the only revenues a school district had was from the levy of taxes. This authority was sanctioned by the State's Constitution. Thereafter respondent district issued these bonds and pledged its revenues for their payment. This was a contract.

Section 4 of said Article 14 also provides: "The supervision of public schools and the execution of the laws regulating the same shall be vested in and confided to such officers as may be provided by the General Assembly."

The respondent admits that the bonds are valid; it admits that it owes the debt expressed; it says by its answer and cross-complaint (R. 83) that it will not pay its bonds and interest because it needs the money for other purposes. It therefore in effect admits the impairment of the contract to repay. It claims that the directors were without power to pledge the revenues. It does *not* claim that it has made provision for the payment. The repayment, therefore, is impaired by Act 169 or 1931, and Act 28 of 1933 as construed by the Supreme Court of Arkansas

in the Horne and Pledger cases. We have urged in our petition and brief that the directors had the power—they had the power because they were authorized to issue bonds. In the case of *Pertuis* v. *Williams,* 137 Ark. 425, 208 S. W. 789, the court said:

> "Article 14 of the Constitution of 1874 provides for a suitable and efficient system of free schools. Section 4 provides that the supervision of the public schools, and the execution of the laws regulating the same, shall be vested in and confided to such officers as may be provided for by the General Assembly. Pursuant to this article of the Constitution, our General Assembly has provided for a comprehensive system of public schools and has confided the management and regulations of the same to a board of directors." (Italics ours.)

It was also held in the case of *A. H. Andrews* v. *Delight Special School District,* 95 Ark. 26, 128 S. W. 361, that the directors have full power, there the court said:

> "The rule respecting such powers is that, in addition to the powers expressly given by statute an officer or board of officers, he or it has by implication such additional powers as are necessary for the due and efficient exercise of powers expressly granted or which may be fairly implied from the statute granting the express powers."

We urge that the above cases cited in our original brief have been entirely overlooked by learned counsel for respondent in their brief, and were not considered by the Supreme Court in the cases construing Act 169.

B.

Respondent Claims in Its Brief and in Its Pleadings (R. 83) *That if the Eighteen Mills are Used to Pay for Buildings It Cannot Operate Its Schools*

The district court held that the vote of 18 mills without expressing the purpose for which the mills were voted prevented the use of any part of said mills for the payment of the bonds, which were issued for the constructing of buildings. Amendment No. 11 as admitted by respondent's brief (page 19), made no change except to increase the mills which could be voted from 12 to 18. There was no law in Arkansas prior to Act 169 which gave any power to electors to impair the obligation of a contract to issue bonds and to repay said bonds. Amendment No. 11 names three purposes for which the 18 mills may be levied: maintenance of schools; constructing of buildings; and payment of debts due to construction of buildings. These three purposes are all school purposes. In the case of *School Dist. of Hartford* v. *West Hartford School Dist.*, 102 Ark. 261, 143 S. W. 895, it was held that a vote of the electors for teachers' salaries could be used for building purposes, and that a vote of mills for building purposes could be used for teachers' salaries.

The prohibition in the Constitution prior to Amendment No. 11, as well as in Amendment No. 11, did not prevent the use of taxes levied and collected from being used for *any* school purpose named in said amendment. The Hartford case, up to and after the issuance of these bonds, was never altered, reversed or modified. Act 169 as construed impairs the obligation of the contract by giving power to the electors to defeat payment when no such

power was ever contained in any previous act of the Legislature. By voting as they did they impaired the contract to repay.

C.

Erie Railroad and Tidal Oil Cases

Counsel in their brief (page 19) state there is no constitutional question to be passed upon. They call the court's attention to the Erie Railroad case, 304 U. S. 64, and make the broad statement that Federal Courts must follow the decisions of the State Courts in all questions of general jurisprudence. Ordinarily this is true in cases where there is *not* brought into controversy the question of the impairment of an obligation founded upon or based upon a specific act of the Legislature empowering public officials to borrow money and do other acts. The reverse is true where the Supreme Court of a State has placed its stamp of approval upon an act and parties have contracted with each other under such act and the approving opinion of the court. The exclusive power to determine whether there is a contract and whether it is impaired is vested in the Federal Courts when its jurisdiction is properly invoked.

Counsel for respondent also cite the case of *Tidal Oil Co.* v. *Flannagan*, 263 U. S. 444, 68 L. E. 382. That was a case appealed direct from the Supreme Court of Oklahoma. It did not originate in a Federal Court as is true of this case. Chief Justice Taft in his opinion points out with clarity the distinction in these classes of cases. He points out that in the Louisiana and New Orleans cases a statute had been passed subsequently to the contract involved and was held to impair it. He stated:

> "In such a case this court accepts the meaning put upon the impairing statute by the State court as authoritative, but it is the statute, as enforced by the State, through its courts, which impairs the contract, not the judgment of the court."

While denying there was any contract to be impaired, respondent in its brief admitted there was a contract to repay the borrowed money. This is the language in Act 248 of 1905:

> "To borrow money and to mortgage the real property of the district as *security* therefor *under such conditions and regulations as to time, amount, rate of interest and manner of payment as the board of school directors of said school district shall prescribe.*"

No language in granting power to a board of directors could be broader and more all-inclusive. That language is conclusive on this and other courts. The voter is given no voice in determining whether the special school district shall issue bonds. The voter's power to veto the issuance of bonds by a special school district was destroyed by the General Assembly when *that body,* exercising its power under Section 4 of Article XIV of the Constitution of 1874 *imposed upon the school directors of special school districts* "the supervision of public schools and the execution of the laws regulating the same." Hence the said board of directors are the "*officers* as may be provided for by the General Assembly."

The respondent claims that the bondholders are merely common creditors. The Constitution of the United States quoted in the beginning of this brief protects contracts made with common creditors, as well as contracts made with secured creditors. See *W. B. Worthen Co.* v. *Thomas,* 292 U. S. 426, 54 S. Ct. 816.

Counsel for respondent attempt to minimize the importance of this question by stating (p. 26) that over 95% of the school districts in Arkansas have refunded their outstanding bonds under the provisions of Act 169 of 1931. There is nothing in the record to substantiate this fact, and with all due respect, it is a misstatement. Had they consulted the State Department of Education, they would have found that actually less than 50% of such bonds had been refunded. They do not deny the correctness of the Comptroller's figures of $23,000,000 of school bonds issued. Though 95% of such bonds *may* have been refunded, there would still be outstanding over one and a half million dollars in such bonds. This is a very considerable amount of money, and petitioners' part of such sum amounts to $185,000.

This is to be said of the opinion in the case of *Pledger* v. *Cuttrell*, 189 Ark. 562, 74 S. W. (2nd) 646: the country at that time was in the throes of a depression. This was really a friendly suit. The action was brought by a taxpayer, not a bondholder, against the County Treasurer. A reading of the case will show that no Trustee for any bondholder was a party to such suit, and the majority opinion in that case was not binding upon the owners of any such bonds, much less owners of issues of other bonds of other districts. Had that been a vigorously contested case and had the case been properly briefed the opinion of the court would have been the dissenting opinion of Mr. Justice Smith, which is reported in 75 S. W. (2nd) 76, in which he very aptly stated:

> "The authority to vote the 18 mills is derived from the 11th Amendment to the Constitution, as is said in the majority opinion, and I submit that a vote 'For

General Tax' includes each and all of these purposes, and it should be assumed, in the absence of a showing to the contrary, that the electors had dedicated the tax to all the purposes shown in the budget report of the school directors. * * *

"A tax thus voted, when not otherwise limited, as was done in the Horne case, *supra*, covers all items for which the tax may be voted. If this is not true, then no tax whatever was voted. There is no more reason for saying the general tax is applicable for maintenance of schools than it is for the retirement of existing indebtedness. Neither was written on the ballot. The electors might have voted a definite number of mills for either purpose, but they did not do so."

CONCLUSION

In respondent's brief (p. 22) the suggestion is made that the mortgage securing the bonds of 1931 was filed 8 o'clock p. m., March 24, 1931, and it is also suggested in said brief that there is an excess of the loan by reason of the amount together with the old bonds exceeding 7% and 10%. The school district cannot in this court or in any other court raise those questions. The school district never filed any pleading alleging that the bonds were invalid. The owners of the 1931 bonds filed their intervention in May, 1935. Evidence was taken and all the facts involving the validity or invalidity of those bonds were brought forth in court and the court, after a full hearing of all the testimony adjudged the bonds valid and rendered a judgment against the defendant school district for the $102,000 in bonds and all past due interest.

That final decree thus prohibits all parties thereto from discussing the validity of the bonds. We, therefore, re-

spectfully request that these references have no bearing upon the merits of the case and it seems to us that they are made for the purpose of prejudicing the Court.

We respectfully pray as in our original brief.

Respectfully submitted,

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